

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
National Exchange Carrier Association, Inc.) WC Docket No. 02-340
Tariff FCC No. 5, Transmittal No. 951)

**COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA) hereby submits its comments in support of the Direct Case of the National Exchange Carrier Association, Inc. (NECA) in response to the issues set for investigation in the FCC's *Designation Order*.¹ The proposals to require security deposits from customers deemed to have high credit risks and to reduce the notice required before termination of service are warranted and necessary to protect small and rural carriers from the risk of uncollectibles. The tariff revisions are clearly defined and targeted to address only those customers who pose the most significant risk of loss to the NECA pooling companies.

I. STATEMENT OF INTEREST

NTCA is a national industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 555 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members also provide wireless, cable, Internet, satellite

and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act) and all participate to varying degrees in the NECA pools. As such, NTCA members have a substantial and vested interest in the outcome of this proceeding.

II. FINANCIAL UNCERTAINTY SURROUNDING OTHER CARRIERS SHOULD NOT CREATE ADDITIONAL RISK FOR SMALL CARRIERS AND THEIR CUSTOMERS

Incumbent local exchange carriers saw a large spike in their uncollectibles in 2002. Looking at NECA’s data it may appear that the 2002 spike is an aberration in an otherwise slow and predictable growth rate in uncollectibles.² However, the data of the 1990s does not reflect the substantial risk associated with doing business with interexchange carriers today. The 2002 spike likely signals the beginning of a trend. NECA predicts that the risk of future uncollectibles is high and that the risk is likely to continue for the foreseeable future.³

That risk should be mitigated for small carriers and their customers. If not paid by a large customer or group of customers, small carriers are forced to forgo upgrading service or they must increase the rates of paying customers. Either way, the paying customer suffers. Whether uncollectibles result from a troubled economy, poor management, or increasing competitive pressures, financially sound small carriers should be permitted to act to lessen the risk to themselves and ultimately, their customers.

¹ National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 951, WC Docket No. 02-340, *Order*, DA 02-2948 (rel. Oct. 31, 2002).

² *See*, NECA Direct Case, p. 4.

³ NECA Direct Case, pp. 14-17.

III. THE PROPOSED SECURITY DEPOSITS WILL HELP MITIGATE THE RISKS TO SMALL CARRIERS AND WILL BE SUFFICIENTLY TARGETED TO THE CUSTOMERS CAUSING THE INCREASED RISK

NECA's Transmittal No. 951 focuses on identifying specific customers that are likely to default and requiring deposits from them to help limit losses from nonpayment. The revisions are necessary since the current security deposit provisions fail to protect the telephone company in those instances where a customer with a prompt payment history suddenly ceases to pay its bill for a few months prior to filing for bankruptcy. As NECA demonstrates in its Direct Case,⁴ when a company files for bankruptcy or suddenly ceases payment, there will nearly always be more than two months of unpaid, outstanding charges. These outstanding charges may amount to tens of millions of uncollectible dollars across the pooling companies.

The NECA tariff revisions attempt to remedy the situation and provide greater stability for small carriers, by requiring two months worth of security deposits from those companies at greatest risk for default. The deposits are only levied against customers whose credit ratings have fallen below commercially acceptable standards, indicating that the company's financial situation has changed and that past history of timely payment is not a predictor of future behavior.

There is a definite and demonstrable correlation between a company's credit rating and likelihood of default. NECA found that more than 90% of all rated companies that defaulted since 1983 would have received ratings of commercially

⁴ See, NECA Direct Case, pp. 12-13.

unacceptable based on the proposed tariff standards.⁵ It is reasonable to require deposits from these troubled carriers.

Further, there is no opportunity for carrier arbitrage in enacting the deposit requirements. The security deposit provisions could only be applied with evidence of a lack of customer creditworthiness. Once enacted, a telephone company would be unable to discriminate against customers in applying the tariff provisions. A telephone company would be required to apply the same deposit treatment to all access customers, even its own affiliated companies.

The security deposit provisions of Tariff Transmittal No.951 are reasonable and necessary to protect small carriers from the fall-out of future carrier customer bankruptcies. They are neither unfair, nor arbitrary. The security deposits merely provide small carriers with assurance of some payment for service to a financially troubled customer carrier.

IV. A SHORTENED TERMINATION NOTICE PERIOD IS JUST AND REASONABLE

By the time a customer payment is late, there are already one to two months of charges for service for which the customer has not paid.⁶ The current requirement that directs carriers to provide late-paying customers with a 30-day notice before terminating service adds to the amount of uncollectibles. The extra month waiting period adds to the charges owed and may cause the outstanding bill to surpass the

⁵ NECA Direct Case, p. 20.

⁶ Carriers bill their usage charges in arrears and their non-usage charges in advance. For charges billed in arrears, a minimum of 97 days of outstanding charges exist on the day service can be terminated under the current tariff provisions. For charges billed in advance, the number of days worth of outstanding charges is at least 67 days. NECA Direct Case, pp.12-13, 24.

security deposit on hold, whether the Commission approves the security deposit tariff revisions or not.

A notice period of ten days prior to termination is amply reasonable. The customer would already be in arrears by a month or two. If the lack of payment was due to mistake or oversight, the customer would have plenty of time to correct. If the lack of payment was due to lack of funds, the notice of termination would not come as a surprise. The shortened notice period gives the customer time to make payment, while at the same time reducing the risk of additional uncollectibles to the carrier.

V. CONCLUSION

There is much financial uncertainty in the telecommunications industry today. Small ILECs face a substantial risk of increasing uncollectibles from their larger carrier customers. The small carriers must be permitted to protect themselves so that they may continue to provide quality, reliable service to their customers, rather than fall victim to the troubles of other carriers. The provisions of the NECA tariff are just and reasonable. They fairly balance the needs of the small carriers against the increased burdens on their customers. The tariff revisions target only those customers considered at risk for future non-payment, leaving the vast majority of customers

unaffected. The Commission should permit NECA Tariff FCC No. 5, Transmittal No. 951 to take affect immediately.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in WC Docket No. 02-340, DA 02-2948 was served on this 4th day of December 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail Malloy

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